



## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9954-11-OGC]

### Proposed Settlement Agreement, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed settlement agreement; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (“CAA”), notice is hereby given of a proposed settlement agreement to settle a lawsuit filed by Air Alliance Houston, Community In-Power and Development Association, Inc., Louisiana Bucket Brigade, and Texas Environmental Justice Advocacy (“Petitioners”), in the United States Court of Appeals for the D.C. Circuit: Air Alliance Houston, et al. v. EPA, Case No. 15-1210. On July 10, 2015, Petitioners filed a petition for review challenging a final action issued by the United States Environmental Protection Agency (“EPA”) entitled “New and Revised Emission Factors for Flares and Other Refinery Process Units and Determination for No Changes to VOC Emission Factors for Tanks and Wastewater Treatment Systems.” 80 FR 26925 (May 11, 2015) (“Emission Factor Action”). Under the terms of the proposed settlement agreement, if EPA performs specified actions by December 16, 2016, the Petitioners will dismiss their lawsuit.

**DATES:** Written comments on the proposed settlement agreement must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2016-0582, online at [www.regulations.gov](http://www.regulations.gov). For comments submitted at [www.regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](http://www.regulations.gov). The EPA may publish any comment received to its public

docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Susan Stahle, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: (202) 564-1272; fax number (202) 564-5603; email address: [stahle.susan@epa.gov](mailto:stahle.susan@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Additional information about the proposed settlement agreement.**

On May 1, 2013, Petitioners filed a lawsuit against EPA alleging that the EPA had failed to review and, if necessary, revise emissions factors at least once every three years as required in CAA section 130. *Air Alliance Houston, et al. v. McCarthy*, No. 1:13-cv-00621-KBJ (D.D.C.). In that lawsuit, the Petitioners sought to compel EPA to review the volatile organic compounds (VOC) emissions factors for industrial flares (“flares”), liquid storage tanks (“tanks”), and wastewater collection, treatment and storage systems (“wastewater treatment systems”), and, if necessary, revise those emission factors. EPA entered into a consent decree with the Petitioners

to settle that lawsuit. Under the terms of the consent decree, on April 20, 2015, EPA finalized a new VOC emissions factor for flares and finalized a determination that it was not necessary to revise the VOC emissions factors for tanks and wastewater treatment systems, and posted these actions on its AP-42 website (“the Emission Factor Action”). AP-42 is a guidance document that contains emissions factors and process information for more than 200 air pollution source categories.

On July 10, 2015, the Petitioners filed a petition for review in the D.C. Circuit Court of Appeals seeking judicial review of EPA’s Emission Factor Action posted on its website on April 20, 2015, which was taken in response to the consent decree described above. Petitioners have challenged the Emission Factor Action by raising the following five issues: (1) the total hydrocarbon (“THC”) emissions factor for flares used in Section 13.5 of EPA’s official Compilation of Air Pollutant Emission Factors known as “AP-42”; (2) the minimum heat value of the gas in the combustion zone of the flare test data used to develop the VOC emissions factors in Section 13.5 of AP-42; (3) the average destruction efficiency of the flare test data used to develop the VOC emissions factor in Section 13.5 of AP-42; (4) the molecular weights used in the calculation of the VOC emissions factor in Section 13.5 of AP-42; and (5) the source classification codes (“SCCs”) associated with the flare emissions factors in Section 13.5 of AP-42.

The proposed settlement agreement would settle Petitioners’ lawsuit in the United States Court of Appeals for the D.C. Circuit challenging, under CAA section 307(b)(1), the Emission Factor Action. Under the terms of the proposed settlement agreement, if EPA performs specified actions by December 16, 2016, the Petitioners will dismiss their lawsuit. Consistent with EPA

practice and the terms of the settlement agreement, EPA will post any actions it takes on its AP-42 website at <https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emission-factors>. The proposed settlement agreement also provides for each party to bear its own litigation costs.

For a period of 30 days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to the agreement should be withdrawn, the terms of the agreement will be affirmed.

## **II. Additional information about commenting on the proposed settlement agreement.**

### *A. How Can I Get a Copy of the Proposed Settlement Agreement?*

The official public docket for this action under Docket ID No. EPA-HQ-OGC- 2016-0582 contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through [www.regulations.gov](http://www.regulations.gov). You may use the [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at [www.regulations.gov](http://www.regulations.gov) without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and To Whom Do I Submit Comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment

and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the [www.regulations.gov](http://www.regulations.gov) website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 6, 2016.

Gautam Srinivasan,  
Acting Associate General Counsel.  
[FR Doc. 2016-24782 Filed: 10/12/2016 8:45 am; Publication Date: 10/13/2016]